

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

In re:

A&R CHAVIRA, LLC,

Debtor.

Case No. 23-30067-hcm

Chapter 11

**LIMITED RESPONSE OF VEHICLE ACCEPTANCE CORPORATION TO DEBTOR'S
MOTION TO DISMISS CHAPTER 11 CASE PURSUANT TO 11 U.S.C. §1112(b)**

TO THE HONORABLE H. CHRISTOPHER MOTT,
UNITED STATES BANKRUPTCY JUDGE:

Vehicle Acceptance Corporation (“VAC”), a creditor in this Chapter 11 case, responds to the Debtor’s Motion to Dismiss Chapter 11 Case Pursuant to 11 U.S.C. §1112(b) (“*Motion*”) [docket #60] filed by A&R Chavira, LLC, the Debtor, as follows:

A. Response

1. VAC admits that the Debtor filed for relief under Chapter 11 of the Bankruptcy Code on January 24, 2023. VAC is without knowledge or information sufficient to admit or deny the remaining allegations contained in Paragraph 1.

2. VAC admits the allegations contained in Paragraph 2.

3. Paragraph 3 is a legal statement for which no response is required.

4. VAC admits the Orders referenced in Paragraph 4(a) were entered and that they provide the relief set out in the Orders. VAC is without knowledge or information sufficient to admit or deny the remaining allegations contained in Paragraph 4.

5. VAC is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 5.

6. VAC is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 6.

7. No response is required for Paragraph 7.

B. Factual and Procedural Background

8. VAC provides the Debtor with floor plan financing for the Debtor's used retail and wholesale car business. The financing is evidenced by a Demand Promissory Note and Security Agreement (the "*Note*"), whereby the Debtor promised to pay VAC such amounts as are advanced together with interest.

9. The Note is secured pursuant to its terms by all of the Debtor's assets including but not limited to its machinery, equipment, furniture, vehicles, inventory, documents, accounts, chattel paper and general intangibles, all including proceeds. The collateral is described in detail in Section 1.6 of the Note. The collateral includes all vehicles and other inventory financed by VAC (the "*Purchase Money Inventory*"). VAC perfected its lien on the Purchase Money Inventory by filing a UCC-1 with the Texas Secretary of State.

10. The Note includes various covenants to protect VAC and its Purchase Money Inventory. For example, Section 5.1 of the Note prohibits the Debtor from attempting to or actually selling or otherwise disposing of the Purchase Money Inventory or removing it from the Debtor's premises for a period exceeding twenty-four hours.

11. As of the bankruptcy filing date VAC's Purchase Money Inventory consisted of 33 vehicles. According to the Debtor's Schedules at the time of its bankruptcy filing the Debtor had 23 of VAC's vehicles "in stock" and had sold 8 vehicles out of trust.

12. By Agreed Order Granting Motion of Vehicle Acceptance Corporation for Relief From Stay Against Property of the Estate entered on March 15, 2023, the automatic stay was lifted as to VAC. However, VAC has only been able to recover 15 of its vehicles. Thus 18 vehicles remain outstanding and

unaccounted for, 8 of which the Debtor indicated on his Schedules had been sold out of trust. Upon information and belief additional vehicles may have been sold out of trust (possibly post-petition).

C. Legal Argument

13. The Court may grant a chapter 7 debtor's motion to dismiss the case "after notice and a hearing and for cause". 11 U.S.C. §707(a). Debtors do not have an absolute right to voluntarily dismiss a chapter 7 case. *In re Dutka*, 604 B.R. 726, 730 (Bankr. S.D. Tex. 2019). The decision whether to grant a motion to dismiss a petition in bankruptcy lies within the discretion of the bankruptcy judge. *Matter of Atlas Supply Corp.*, 857 F.2d 1061, 1063 (5th Cir. 1988).

14. In order to determine whether to grant a voluntary motion to dismiss, a court must weigh the prejudices and interests of both creditors and debtors. *In re Dutka*, 604 B.R. at 730. If dismissal would prejudice creditors then it will ordinarily be denied. *Matter of Atlas Supply Corp.*, 857 F.2d. at 1063. Delay in satisfying creditors' claims can be sufficient to preclude dismissal. *Id.*

15. This case should not be dismissed unless and until the Debtor provides an accounting of all of VAC's collateral and the proceeds of sale of VAC's collateral, including whether sale proceeds remain outstanding from buyers.

WHEREFORE, Vehicle Acceptance Corporation requests that dismissal of this case be conditioned on an accounting as set out herein, and for such other and further relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Response was delivered by first class, U.S. mail to the parties on the attached list this 27th day of April, 2023.

James W. Brewer



Label Matrix for local noticing
0542-3
Case 23-30067-hcm
Western District of Texas
El Paso
Thu Apr 27 10:23:35 CDT 2023

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

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End of Label Matrix
Mailable recipients 26
Bypassed recipients 0
Total 26